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Gangs in Public Schools: a Survey of State Legislation

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I. INTRODUCTION

A number of state legislatures have enacted measures to bolster the efforts of public school administrators to counter the ill effects of gang-related behavior. Thus far, the corpus of legal literature (anemic as it is) on gangs in schools has focused exclusively on judicial case law.¹ This article, then, purports to address a gap in the research by providing a comprehensive survey of state laws that grant K-12 administrators specifically enumerated powers to suppress gang activity and association.²

This overview of legislative action must find context in the educator's larger quest to develop institutional responses based on a genuine understanding of youth gang behavior. Statutes are typically a product of some combination of public opinion and political compromise. Hence, the motivating factors that drive legislation should be weighed against social science research as well as against local assessments of the gang problem. By summarizing the statutory materials and reconstructing legislative rationales, I have attempted to ease the task of comparison.

1. Jesse C. Cheng, *Gang-Specific Policies and Regulations in the K-12 Educational Context*, Whittier J. of Child and Fam. Advoc. (forthcoming 2002); James A. Maloney, Student Author, *Constitutional Problems Surrounding the Implementation of "Anti-Gang" Regulations in the Public Schools*, 75 Marq. L. Rev. 179 n.1 (1991).

2. Some states have enacted more general legislation that authorizes, encourages, or mandates school policies on gangs. See e.g. Ark. Code Ann. § 6-15-1005 (Michie 2001), Colo. Rev. Stat. § 22-32-109.1 (2001), Miss. Code Ann. § 37-11-55 (2001), and Utah Code Ann. § 53A-11-902 (2001) (requiring school safety policies to address gang-related behavior). Other jurisdictions have passed laws that focus on developing programs and strategies for gang prevention and/or intervention. See e.g. Cal. Educ. Code Ann. § 32261 (West 2001) (encouraging schools to partner with law enforcement in preventing gang violence and membership); Colo. Rev. Stat. § 22-25-102 (2001) (authorizing comprehensive health education as a means of curtailing gang activity); Okla. Stat. tit. 10, § 7302-7.1 (2001) (establishing school-based intervention and deterrence programs); Or. Rev. Stat. § 336.109 (2001) (specifying guidelines for developing prevention policies); Utah Code Ann. § 53A-15-601 (2001) (providing funds for prevention and intervention programs).

Laws on school-based gang suppression invariably involve prohibitions on—and sometimes special penalties for—two main classes of actions: (1) the display of gang paraphernalia and dress and (2) participation in general gang activity, including mere membership. In order to give an accurate picture of the statutes' content, I have taken the liberty of faithfully reproducing all relevant portions. All states that have enacted pertinent laws as of this writing are included below.

II. GANG-RELATED CLOTHING

Legislators have justified gang-targeted dress codes by highlighting the importance of establishing a safe learning environment. The fact that gang apparel has been the subject of particularized legislation raises several preliminary points.

First, legislators seem to perceive a strong link between expressions of gang affiliation and the actual threats that gangs pose. Indeed, there are more statutes on gang clothing than there are laws on gang activity; most of the latter, moreover, refer to dress in some way. For lawmakers, what gang members actually do as individuals has merited less attention than what these youths, as representatives of the gang, communicate to members of the school community. The focus lies on how others may react to gang-related apparel—not on whether gang members themselves, by virtue of being gang members, are more likely to engage in illicit activities.

The second point elaborates on this relational aspect of gang conduct. By highlighting the need to suppress gang-related expression, lawmakers are attempting to prevent the possibility of *conflict* that such expression may engender. As they see it, messages of gang solidarity, as manifest in dress mannerisms and symbols, sow the seeds for *confrontation*.

Finally, legislators believe that separate actors can receive distinct messages, and that differences in interpretation may influence how the threat of discord bears out in practice. If gang dress is viewed as a threat in itself—an announcement of the wearer's dangerousness—people may fearfully retreat from the risk of conflict. Alternatively, rival gang members may interpret the same message as a challenge and respond with aggression. The school community at large may find yet other expressive intentions in gang clothing, including the

affirmation of the gang lifestyle, announcements of hatred, acceptance of deviant values, and disregard for authority.

The following statutes each proceed on their own theories, articulated in varying degrees of specificity, about what gang clothing says, how others understand those messages, and what manners of disruption likely will ensue.

A. California

In 1993, California passed a bill that allowed campus safety plans to respond to gang-related concerns. The law affords school boards the power to outlaw "gang-related apparel":

The comprehensive school safety plan shall include . . . (F) the provisions of any schoolwide dress code . . . that prohibits pupils from wearing "gang-related apparel," if the school has adopted such a dress code. For those purposes, the comprehensive school safety plan shall define "gang-related apparel." The definition shall be limited to apparel that, if worn or displayed on a school campus, reasonably could be determined to threaten the health and safety of the school environment. . . .³

The sole qualification on the definition of "gang-related apparel" reveals the overriding justification for anti-gang dress codes: safety is foremost. However, the prohibition on gang dress is not categorical. There must be some reasonable belief about its potential to threaten the pedagogical function. Furthermore, the legislature does not make gang-specific dress codes mandatory, even in instances where apparel *does* compromise the integrity of the learning environment.

The legislature elaborates its rationales in a preceding portion of the state education code.⁴ The declarations therein include factual findings and expressions of intent:

- In many schools, children "are forced to focus on the threat of violence and the messages of violence contained in many aspects of our society, particularly reflected in gang regalia that disrupts the learning environment."⁵
- "'Gang-related apparel' is hazardous to the health

3. Cal. Educ. Code § 35294.2(a)(2)(F) (West 2001).

4. Cal. Educ. Code § 35183 (West 2001).

5. *Id.* at § 35183(a)(1) (West 2002).

and safety of the school environment."⁶

• Schoolwide uniform policies are reasonable on two grounds. First, "a required uniform may protect students from being associated with any particular gang."⁷ Second, "by requiring schoolwide uniforms teachers and administrators may not need to occupy as much of their time learning the subtleties of gang regalia"—an important point, since keeping teachers and administrators apprised of these variations "takes an increasing amount of time away from educating our children."⁸

Several main ideas emerge from this text. With regard to the specific mode of disruption, California's lawmakers are particularly anxious about physical altercations. By describing the communicative elements of gang dress to include threats as well as messages, the legislature appears to perceive different kinds of expressive content. Gang dress communicates a threat of bodily danger to others; furthermore, it portrays violence as acceptable, even desirable. The intended viewers of the expressive action include not only those who would potentially suffer harm, but also those who might find appeal in the violent aspect of gang life. Therefore, the legislature acts with the purpose of preventing fear on the one hand, and minimizing approval of and attraction to gangs on the other.

The legislature then proceeds to identify a third party to protect—those who might be "associated with any particular gang" because of their dress. This group, of course, includes gang members themselves. California recognizes that gang youths, in addition to being instigators of conflict, are victims of it. Compared with the statutes to be described, California's law features the most bare-faced acknowledgement that students involved in gangs are nevertheless themselves part of the school community.

The legislature raises two final points. First, the need to protect all three student groups acquires added force because they constitute a captive audience. Children are confined within the school's walls and thus are forced, in some sense, to witness threats and messages contained within. Second, the

6. *Id.* at § 35183(a)(2) (West 2002).

7. *Id.* at § 35183(a)(5) (West 2002).

8. *Id.* at § 35183(a)(3) (West 2002).

legislature maintains that teachers cannot instruct as effectively if they must continually monitor student dress. Pedagogy is further compromised when teachers have to contend with preventive concerns as well as actual outbreaks of violence.

In summary, California's lawmakers believe that a mandatory school uniforms policy will improve the educational endeavor by reducing fear, suppressing affirmation of the gang lifestyle, protecting students from victimization, and freeing teachers from undue order maintenance concerns.

B. Iowa

Unlike California, the state of Iowa incorporates a statement of intent directly into its statute:

1. The general assembly finds and declares that the students and the administrative and instructional staffs of Iowa's public schools have the right to be safe and secure at school. Gang-related apparel worn at school draws attention away from the school's learning environment and directs it toward thoughts or expressions of violence, bigotry, hate, and abuse.
2. The board of directors of a school district may adopt, for the district or for an individual school within the district, a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school.⁹

The assembly underscores the importance of safety and security vis-à-vis both students and school officials. In its view, these ends are threatened because the display of gang dress imposes certain negative thoughts on its wearers and observers. The intimation is that such thoughts engender conflict, fear, and preoccupation with destructive ideas, all of which distract students and teachers from the task of education.

Although Iowa seems to denounce gang-affiliated clothing more unconditionally than California, it does make specific dress policies contingent on one of two conditions. The first,

9. Iowa Code § 279.58 (2001).

again, is that the policies must be conducive to establishing an appropriate learning environment. The second is that such dress codes are required for the proper administration of discipline. Apparently, the Iowa legislature believes that there are certain situations in which behavioral deterrence requires gang-specific regulatory tools. For example, schools might impose dress code penalties as a zero-tolerance measure, hoping to curb relatively innocent gang behavior before it develops into serious confrontation. Whatever the enforcement practice, the main point here seems to be that the discipline of gang members calls for special measures.

C. *New Jersey*

Unlike California and Iowa, New Jersey isolates gangs that are "associated with criminal activities," as determined by law enforcement, and imposes unqualified restrictions on all clothing associated with these groups:

A board of education may adopt a dress code policy to prohibit students from wearing, while on school property, any type of clothing, apparel or accessory which indicates that the student has membership in, or affiliation with, any gang associated with criminal activities. The local law enforcement agency shall advise the board, upon its request, of gangs which are associated with criminal activities.¹⁰

A preliminary section of the code details the legislature's justifications:

The Legislature finds and declares that many educators believe that school dress can significantly influence pupil behavior and that schools that have adopted dress codes, including dress codes which require school uniforms and which prohibit clothing indicating membership in certain gangs, experience greater school pride and improved behavior in and out of the classroom. The Legislature further finds that to assist in controlling the environment in public schools, to facilitate and maintain an effective learning environment, and to keep the focus of the classroom on learning, school districts should be specifically authorized to implement uniform clothing requirements

10. N.J. Stat. Ann. § 18A:11-9 (West 2001).

for their students.¹¹

Instead of expressly addressing the issue of safety, New Jersey's lawmakers cite the state's general interest in preserving a controlled, focused, and effective learning environment. They take the expressive messages of criminally-engaged gangs to pose unique difficulties for the stability and functioning of the educational setting. Interestingly, schools do not have to satisfy any evidentiary requirement to support this assumption. That is, a group's activities outside of school can serve as the basis for regulating that group within it.

In terms of mindset, New Jersey's statute stands apart for its call to redirect efforts toward the task of educating, as opposed to merely avoiding undesirable outcomes. This may explain the legislature's decision to outsource gang identification duties; because the legislature wants schools to concentrate on how to educate instead of whom to punish, it charges law enforcement with the task of defining potentially disruptive groups. The ironic consequence, however, is that certain individuals become distinctive candidates for discipline even before they set foot within the school's perimeters.

D. Washington

Echoing the vagueness concerns raised in the courts,¹² Washington's representatives mandated that schools provide adequate notice of what comprises gang clothing:

School district boards of directors may adopt dress and grooming code policies which prohibit students from wearing gang-related apparel. If a dress and grooming code policy contains this provision, the school board must also establish policies to notify students and parents of what clothing and apparel is considered to be gang-related apparel. This notice must precede any disciplinary action resulting from a student wearing gang-related apparel.¹³

11. N.J. Stat. Ann. § 18A:11-7 (West 2001).

12. See e.g. *Stephenson v. Davenport Community Sch. Dist.*, 110 F.3d 1303 (8th Cir. 1997) (holding that no gang-specific regulation can withstand a vagueness challenge without providing an adequate definition of a "gang"); *Chalifoux v. New Caney Indep. Sch. Dist.*, 976 F. Supp. 659 (S.D.Tex. 1997) (ruling that a regulation defining "gang-related apparel" simply as "[a]ny attire which identifies students as a group (gang-related)" is void for vagueness).

13. Wash. Rev. Code § 28A.320.140(6) (2001).

They explain their restrictions on gang clothing thus:

The legislature recognizes that the prevalence of weapons, including firearms and dangerous knives, is an increasing problem that is spreading rapidly even to elementary schools throughout the state. Gang-related apparel and regalia compound the problem by easily concealing weapons that threaten and intimidate students and school personnel. These threats have resulted in tragic and unnecessary bloodshed over the past two years and must be eradicated from the system if student and staff security is to be restored on school campuses. Many educators believe that school dress significantly influences student behavior in both positive and negative ways. Special school dress up and color days signify school spirit and provide students with a sense of unity. Schools that have adopted school uniforms report a feeling of togetherness, greater school pride, and better student behavior in and out of the classroom. This sense of unity provides students with the positive attitudes needed to avert the pressures of gang involvement.¹⁴

Washington's legislature shares the common worry about school safety, but it strays from the pack in depicting the threat of gang clothing in functional terms. The essential concern involves the use of clothing to conceal arms, not the expressive content of that clothing; it is the weapons that "threaten and intimidate" rather than the apparel itself. Therefore, the legislature, at least at first blush, appears to proscribe gang wear solely as means to prevent weapons-related violence.

The latter portion of this passage does seem to recognize, albeit indirectly, that gang-related apparel has a communicative aspect as well. If school dress instills students with feelings of cohesion, then gang clothing, with its pronouncements of divergent affiliations, suggests divisiveness. Well-crafted dress regulations can minimize feelings of disunity. And according to Washington's legislators, any effort to encourage identification with the wider school community will weaken the gang's sway over its own ranks and help students to resist gang membership in the first place.

14. Wash. Rev. Code Ann. § 28A.600.455 (West 1997).

III. GENERAL ACTIVITY AND MEMBERSHIP

A few states, wishing to take even stronger prophylactic measures against gangs in schools, have promulgated laws directed at all gang-related behavior, including mere membership. The historical precursor to these laws is court-supported bans on student fraternities, sororities, and secret societies. When those laws faced legal action in the 60's and 70's, courts were quick to offer their support, decrying in particular the divisive influences of such organizations.¹⁵ The legislation on general gang behavior has remained unchallenged to date.

Again, the fact that legislatures have put the spotlight on gang-related conduct gives rise to some introductory observations.

Various reasons might explain why proscriptions on gang activity are warranted. It may be that so many acts carried out under the gang's banner are sufficiently destructive that officials would be wise to bar them all. If this is the case, the controlling standard must be the proper functioning of the schools; any official restriction on gang behavior would have to be motivated by reasonable fear of an adequate threat to this goal. Alternatively, administrators may wish to key in on gang affiliation—the being rather than the doing. Under this view, a student's personal identification with the gang is the most pressing problem, perhaps because of the attitudes, messages, and action tendencies that such identification carries with it. Prohibiting gang activities, whether or not these are primarily destructive in nature, would really serve to get at fundamental ties of affiliation. Again, the evils of gang membership must threaten the pedagogical goals of the school. One possible justification, for example, might involve the need to prevent the disuniting effects that gang allegiance may have on the educational community.

Varying combinations of both explanations are also possible. However, differences in each one's proportional

15. See e.g. *Bradford v. Bd. of Educ.*, 18 Cal. App. 19 (Cal. Dist App. 1912) (declaring that exclusionary student groups foster social cliques and promote a spirit of caste); *Robinson v. Sacramento City Unified Sch. Dist.*, 245 Cal. App. 2d 278 (Cal. App. 3d Dist. 1966) (distinguishing between students' and adults' respective rights to form clubs by emphasizing the young age of students and the educational imperative of fostering democracy).

weight will reflect certain subtleties in motivational orientation. Emphasis on gang membership indicates a preoccupation with a subset of individuals: certain students are distinguished by particular characteristics that merit special attention. On the other hand, a focus on activity reveals a more agent-neutral, community-centered stance to the extent that the impetus is to prevent destructive behavior. But this approach may have agent-specific aspects as well—particularly when there is an emphasis on specialized punishment. The following jurisdictions tell their own stories, again with different levels of clarity, about how specialized legislation can counteract the gang's influence.

A. Nevada

Like New Jersey's legislators, lawmakers in Nevada have chosen to target gangs specifically characterized by criminal involvement. Whether a "criminal gang" is one that is merely "associated with criminal activities," as New Jersey requires, or one that engages in crime as a more central activity is not specified. Neither does the legislature say whether it is the school or law enforcement that decides who belongs.

1. The board of trustees of each school district may establish a policy that prohibits the activities of criminal gangs on school property. The policy may prohibit:
 - a. A pupil from wearing any clothing or carrying any symbol on school property that denotes membership in or an affiliation with a criminal gang; and
 - b. Any activity that encourages participation in a criminal gang or facilitates illegal acts of a criminal gang.
2. Each policy that prohibits the activities of criminal gangs on school property may provide for the suspension or expulsion of pupils who violate the policy.¹⁶

This law focuses on actions. Although association figures as an important consideration, gang member status is cast in terms of activity. Instead of setting students apart for simply being in a gang, the law targets acts of emulation,

16. Nev. Rev. Stat. § 392.4635 (2001).

perpetuation, and actual criminality.

Evidently, Nevada has particular worries about the criminally-prone gang's ability to disrupt the educational function. Exactly how this threat is manifest remains ambiguous in the statute, but the perceived harm is so pernicious that the state is willing to isolate students from the learning community (through suspensions and expulsions) in order to preserve it.

B. Texas

The Texas legislature amended its anti-fraternity statute to include language on youth gangs, supporting this move by noting the judiciary's traditional opposition to exclusionary student groups. The emphasis here is on the arbitrary nature of such groupings and the balkanizing effects they occasion. Consequently, the issue of membership assumes central importance.

(a) A person commits an offense if the person:

(1) is a member or pledges to become a member of, joins, or solicits another person to join or pledge to become a member of a public school fraternity, sorority, secret society, or gang; or

(2) is not enrolled in a public school and solicits another person to attend a meeting of a public school fraternity, sorority, secret society, or gang or a meeting at which membership in one of those groups is encouraged.

(b) A school district board of trustees or an educator shall recommend placing in an alternative education program any student under the person's control who violates Subsection (a).

(c) An offense under this section is a Class C misdemeanor.

(d) In this section, "public school fraternity, sorority, secret society, or gang" means an organization composed wholly or in part of students of public primary or secondary schools that seeks to perpetuate itself by taking in additional members from the students enrolled in school on the basis of the decision of its membership rather than on the free choice of a student

in the school who is qualified by the rules of the school to fill the special aims of the organization. The term does not include an agency for public welfare. . .[or] educational organizations sponsored by state or national education authorities.¹⁷

The legislature defines its targeted groups in terms of the potential effect they have on other students. Encouraging participation in these school groups is against the rules, even if neither the party encouraged nor the party encouraging is herself a student. The idea seems to be that the very perpetuation of these groups must be challenged, because their influence may reach *some* student at some point in time.

The provision about school-sponsored groups underscores the education-advancing purpose of acceptable student organizations. Gangs not only fail to serve any legitimate purpose—they also have deleterious effects on the student community. Such groups predicate membership and participation on unprincipled criteria, thereby diminishing the excluded student's sense of agency and contributing to an ethos of marginalization.

This legislation is marked by several interesting twists. The Texas lawmakers make no mention of the delinquent tendencies of gangs, but unlike the legislatures above, they do make membership and recruitment *bona fide* crimes. While espousing the students' right to decision-making autonomy, the state gives no discretion to school boards in determining whether to bar gang membership or how to punish it. Finally, although the purpose of the statute is to minimize factionalization within the school, the legislature suggests that violators be separated from the mainstream educational community and aggregated elsewhere.

C. Washington

The state of Washington has defined sustained criminal involvement as a key characteristic of the gangs that it endeavors to suppress. This makes the targeted groups more readily identifiable than Nevada's "criminal gangs" or New Jersey's gangs "associated with crime."

- (1) A student who is enrolled in a public school or an alternative school may be suspended or expelled if the

17. Tex. Educ. Code Ann. § 37.121 (Vernon 2001).

student is a member of a gang and knowingly engages in gang activity on school grounds.

(2) "Gang" means a group which: (a) Consists of three or more persons; (b) has identifiable leadership; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.¹⁸

On its face, the statute seems to speak to gang membership *and* gang activity; the two are requisite for disciplinary action. The following passage indicates that the legislature anchors prohibitions of both on the need to maintain a secure learning environment.

The legislature finds that the children of this state have the right to an effective public education and that both students and educators have the need to be safe and secure in the classroom if learning is to occur. The legislature also finds, however, that children in many of our public schools are forced to focus on the threat and message of violence contained in many aspects of our society and reflected through and in gang violence activities on school campuses. . . .

The legislature therefore intends to define gang-related activities as criminal behavior disruptive not only to the learning environment but to society as a whole, and to provide educators with the authority to restore order and safety to the student learning environment, eliminate the influence of gang activities, and eradicate drug and substance abuse on school campuses, thus empowering educators to regain control of our classrooms and provide our students with the best educational opportunities available in our schools.¹⁹

The conjunctive requirements of gang membership and actual activity limit the reach of this statute. However, the above declaration's exclusive emphasis on behavior ("gang violence activities," "gang-related activities," "gang activities") suggests actual activity to be the genuine subject of interest. The membership condition perhaps operates to narrow the class of individuals who can be subject to denial of instruction. Gang members cannot be punished simply for their affiliations, and non-gang students cannot be disciplined for engaging in gang activity.²⁰ The additional requirement that students

18. Wash. Rev. Code Ann. § 28A.600.455.

19. *Id.*

20. *Id.*

"knowingly" carry out gang-related acts further guards against disciplinary abuses.

Interestingly, although Washington's anti-gang dress law (described in the previous section) addresses communicative concerns only obliquely, the notion of expression here takes on much more significance. Safety is jeopardized when the "threat and message" of violent acts are broadcast freely: gang activities exert an "influence" that must be countered. The legislature does not spell out what the expressive content entails, except to say that it undermines the control of authorities, impels students to be conscious of physical conflict, and somehow relates to substance abuse.

IV. CONCLUSION

The value of assessing the scope and nature of gang-targeted legislation is twofold. On the one hand, school officials can learn how crucial actors—elected political representatives—have reacted to very real constituent concerns about a serious social problem. On the other hand, codified laws have the effect of establishing both enabling mechanisms and restricting barriers for action, each of which must concern administrators as they turn to the practical task of educating.

The most prominent aspect of this survey, though, is the number of questions that it does not answer. The statutes contained herein focus solely on gang suppression, but hardnosed opposition is a simplistic response to the deep-rooted, multifaceted social phenomena from which gangs arise. Moreover, even within this limited realm, legislatures throughout the country hold varying and sometimes inconsistent perspectives on what to do and why. As the legal literature on youth gangs continues to grow, school officials will be able to derive a better sense of what legislators and courts think about the gangs-in-schools problem—but the opinions of lawyers and lawmakers are a narrow slice of the panorama, and educators must remember to put this article (and all others that follow it) in its proper context.

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